



STATE OF ARIZONA

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GOVERNOR

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January 25, 2006

The Honorable Jim Weiers
Speaker of the House
Arizona House of Representatives
1700 West Washington
Phoenix, Arizona 85007

Re: House Bill 2002; ELL; SEI models; budget requests

Dear Speaker Weiers:

Today, I vetoed House Bill 2002, related to English language learner programs and corporate and individual tax credits. I remain disappointed that the legislature did not take seriously the need to reach a compromise bill to satisfy the requirements of the court's order in *Flores v. State of Arizona* before sanctions against the State are imposed.

The issue of tuition tax credits for private schools should not even be in this bill. But this tax credit, which lacks a sunset provision, is especially bad legislation. Among my many concerns with House Bill 2002 is that it continues to expose the State to the possibility of virtually unlimited corporate tuition tax credits. The language added to the bill late last night is poorly drafted and fails to specify that the proposed cap applies to *aggregate* contributions. This leaves the state susceptible to the argument by corporate taxpayers that so long as their individual contribution is below the cap, they should be entitled to the benefit of it, even if the consequence is lost revenue to the state of hundreds of millions of dollars.

The bill also continues to allow taxpayers to effectively "double dip" because a contribution to a student tuition organization ("STO") that offers scholarships to ELL students would also satisfy the requirements under the current private tuition tax credit statute. There is nothing in this bill to prevent a taxpayer from claiming both credits for one donation. So, for example, if a taxpayer contributes \$1,000 to an ELL STO, the taxpayer could claim a \$1,000 credit under each statute and thereby gain \$2,000 in credits for a \$1,000 contribution.

In any event, the tax credit issue remains wholly unrelated to the purpose for which I called this special session. As we all know, the overwhelming majority of the State's English language learners attend public schools. Yet, despite my clear call for a special session limited to the issue of "Funding and appropriations for English Language Learner Programs in the *public* schools of the State of Arizona" (emphasis added), the legislature persisted with pursuing the unrelated issue of a \$50 million corporate and individual tuition tax credits for donations to *private* schools. Remarkably, this bill actually allows for more funds to go toward ELL education in private schools than it does for such education in our public schools. This makes no sense and plainly is not reasonably calculated to bring the State into compliance with the court's order that our funding

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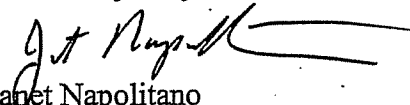
system bear a rational relationship to the actual costs of funding English language acquisition programs.

Indeed, because House Bill 2002 goes beyond the scope of the call for the special session, it would undoubtedly subject the State to additional and costly litigation over its constitutionality.

As you know, sanctions against the State have now begun to accrue. I plan to keep this legislature in special session until it passes a bill I can allow to go into law. In addition, I have asked for, and the Attorney General has agreed to file today, a further motion with the *Flores* court ordering the State Treasurer to pay the sanctions due under the court's December 16, 2005 order to the Arizona Board of Education and distributed by the Arizona Department of Education to school districts and charter schools solely for ELL programs, and on a pro rata basis using the school district's or charter school's current ELL student count for Group B weight calculations.

I remain hopeful that common sense can prevail and that we can enact legislation quickly to give our English language learners the education they deserve and to stop the need for sanctions.

Yours very truly,


Janet Napolitano
Governor

JN:TAN/jm

cc: Hon. Ken Bennett
Hon. Tom Boone

Passed the House January 24, 2006

by the following vote: 33 Ayes

23 Nays, 4 Not Voting

[Signature]
Speaker of the House
Pro Tempore

Cheryl Laube
Assistant Chief Clerk of the House

Passed the Senate January 24, 2006

by the following vote: 16

14 Nays, 0 Not Voting

Ken Blumett
President of the Senate

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

25th day of January, 20 06

at 8:39 o'clock a. M.

Vernice Ybarra
Secretary to the Governor

Approved this _____ day of

at **VETO** o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 25 day of January, 20 06

at 11:33 o'clock A. M.

Janice K. Brewer
Secretary of State

H.B. 2002
First Special Session